

HOUSE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 642

AN ACT

To repeal sections 191.656, 191.659, and
191.677, RSMo, and to enact in lieu thereof
six new sections relating to sexually
transmitted diseases, with penalty
provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Sections 191.656, 191.659, and 191.677, RSMo,
are repealed and six new sections enacted in lieu thereof, to be
known as sections 191.224, 191.656, 191.659, 191.660, 191.677,
and 566.135, to read as follows:

191.224. The department of health and senior services shall
pay for the cost of conducting Hepatitis B testing, Hepatitis C
testing, HIV testing and testing for any other sexually
transmitted diseases for a victim of the crime of rape as defined
in section 556.030, RSMo, or of the crime of sodomy as defined in
section 566.060, RSMo, or of the crime of incest as defined in
section 568.020, RSMo, if a person who is convicted of or pleads
guilty to such crime is determined to be infected with Hepatitis
B, Hepatitis C, HIV or any other sexually transmitted diseases

1 based upon Hepatitis B testing, Hepatitis C testing, HIV testing
2 or testing for any other sexually transmitted diseases conducted
3 upon delivery of the person to the department of corrections
4 pursuant to section 191.659 or conducted pursuant to a court
5 order subsequent to a finding of guilt, plea of guilty or plea of
6 nolo contendere pursuant to section 191.663. Such testing shall
7 be limited to not more than two enzyme-linked immunosorbent assay
8 (ELISA) tests per year and such cost of such tests shall not be
9 paid by the department of health and senior services for more
10 than five years after the date the crime was committed.
11 Hepatitis B testing, Hepatitis C testing, HIV testing or testing
12 for any other sexually transmitted diseases conducted pursuant to
13 this section shall be performed by the public health laboratory
14 of the department of health and senior services.

15 191.656. 1. (1) All information known to, and records
16 containing any information held or maintained by, any person, or
17 by any agency, department, or political subdivision of the state
18 concerning an individual's HIV infection status or the results of
19 any individual's HIV testing shall be strictly confidential and
20 shall not be disclosed except to:

21 (a) Public employees within the agency, department, or
22 political subdivision who need to know to perform their public
23 duties;

24 (b) Public employees of other agencies, departments, or

1 political subdivisions who need to know to perform their public
2 duties;

3 (c) Peace officers, as defined in section 590.100, RSMo,
4 the attorney general or any assistant attorneys general acting on
5 his or her behalf, as defined in chapter 27, RSMo, and
6 prosecuting attorneys or circuit attorneys as defined in chapter
7 56, RSMo, and pursuant to section 191.657;

8 (d) Prosecuting attorneys or circuit attorneys as defined
9 in chapter 56, RSMo, to prosecute cases pursuant to section
10 191.677 or 567.020, RSMo. Prosecuting attorneys or circuit
11 attorneys may also obtain from the department of health the
12 contact information and test results of individuals with whom the
13 HIV-infected individual has had sexual intercourse or deviate
14 sexual intercourse. Any prosecuting attorney or circuit attorney
15 who receives information from the department of health and senior
16 services pursuant to the provisions of this section shall use
17 such information only for investigative and prosecutorial
18 purposes and such information shall be considered strictly
19 confidential and shall only be released as authorized by this
20 section;

21 [(d) Persons other than public employees who are entrusted

22 (d)] (e) Persons [other than public employees] who are
23 entrusted with the regular care of those under the care and
24 custody of a state agency, including but not limited to operators

1 of day care facilities, group homes, residential care facilities
2 and adoptive or foster parents;

3 [(e)] (f) As authorized by subsection 2 of this section;

4 (g) Victims of any sexual offense defined in chapter 566,
5 RSMo, which includes sexual intercourse or deviate sexual
6 intercourse, as an element of the crime or to a victim of a
7 section 566.135 or 567.020, RSMo, offense, in which the court,
8 for good cause shown, orders the defendant to be tested for HIV,
9 hepatitis B, hepatitis C, syphilis, gonorrhea, or chlamydia, once
10 the charge is filed. Prosecuting attorneys or circuit attorneys,
11 or the department of health and senior services may release the
12 defendant's test results to these victims. If the victim is an
13 unemancipated minor, the prosecuting attorney, circuit attorney
14 or the department of health and senior services may also inform
15 the minor's parents or custodian, if any;

16 (h) Spouses of individuals infected with HIV;

17 (i) Any individual who has tested positive or false
18 positive to HIV, Hepatitis B, Hepatitis C, Syphilis, Gonorrhea,
19 or Chlamydia, may request copies of any and all test results
20 relating to said infections.

21 (2) Further disclosure by public employees shall be
22 governed by subsections 2 and 3 of this section;

23 (3) Disclosure by a public employee or any other person in
24 violation of this section may be subject to civil actions brought

1 under subsection 6 of this section, unless otherwise required by
2 chapter 330, 332, 334, or 335, RSMo, pursuant to discipline taken
3 by a state licensing board.

4 2. (1) Unless the person acted in bad faith or with
5 conscious disregard, no person shall be liable for violating any
6 duty or right of confidentiality established by law for
7 disclosing the results of an individual's HIV testing:

8 (a) To the department of health and senior services;

9 (b) To health care personnel working directly with the
10 infected individual who have a reasonable need to know the
11 results for the purpose of providing direct patient health care;

12 (c) Pursuant to the written authorization of the subject of
13 the test result or results;

14 (d) To the spouse of the subject of the test result or
15 results;

16 (e) To the subject of the test result or results;

17 (f) To the parent or legal guardian or custodian of the
18 subject of the testing, if he is an unemancipated minor;

19 (g) To the victim of any sexual offense defined in chapter
20 566, RSMo, which includes sexual intercourse or deviate sexual
21 intercourse, as an element of the crime or to a victim of a
22 section 566.135 or section 567.020, RSMo, offense, in which the
23 court, for good cause shown, orders the defendant to be tested
24 for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, or

1 chlamydia, once the charge is filed. If the victim is an
2 unemancipated minor, no person shall be held liable for
3 disclosing this information to the minor's parents or custodian,
4 if any;

5 (h) To employees of a state licensing board in the
6 execution of their duties under chapter 330, 332, 334, or 335,
7 RSMo, pursuant to discipline taken by a state licensing board;
8 The department of health and senior services and its employees
9 shall not be held liable for disclosing during an epidemiological
10 investigation an HIV infected person's HIV status to individuals
11 with whom that person had sexual intercourse or deviate sexual
12 intercourse;

13 (2) Paragraphs (b) and (d) of subdivision (1) of this
14 subsection shall not be construed in any court to impose any duty
15 on a person to disclose the results of an individual's HIV
16 testing to a spouse or health care professional or other
17 potentially exposed person, parent or guardian;

18 (3) No person to whom the results of an individual's HIV
19 testing has been disclosed pursuant to paragraphs (b) and (c) of
20 subdivision (1) of this subsection shall further disclose such
21 results; except that prosecuting attorneys or circuit attorneys
22 may disclose such information to defense attorneys defending
23 actions pursuant to section 191.677 or 567.020, RSMo, under the
24 rules of discovery, or jurors or court personnel hearing cases

1 pursuant to section 191.677 or 567.020, RSMo. Such information
2 shall not be used or disclosed for any other purpose;

3 (4) When the results of HIV testing, disclosed pursuant to
4 paragraph (b) of subdivision (1) of this subsection, are included
5 in the medical record of the patient who is subject to the test,
6 the inclusion is not a disclosure for purposes of such paragraph
7 so long as such medical record is afforded the same
8 confidentiality protection afforded other medical records.

9 3. All communications between the subject of HIV testing
10 and a physician, hospital, or other person authorized by the
11 department of health and senior services who performs or conducts
12 HIV sampling shall be privileged communications.

13 4. The identity of any individual participating in a
14 research project approved by an institutional review board shall
15 not be reported to the department of health and senior services
16 by the physician conducting the research project.

17 5. The subject of HIV testing who is found to have HIV
18 infection and is aware of his or her HIV status shall disclose
19 such information to any health care professional from whom such
20 person receives health care services. Said notification shall be
21 made prior to receiving services from such health care
22 professional if the HIV infected person is medically capable of
23 conveying that information or as soon as he or she becomes
24 capable of conveying that information.

1 6. Any individual aggrieved by a violation of this section
2 or regulations promulgated by the department of health and senior
3 services may bring a civil action for damages. If it is found in
4 a civil action that:

5 (1) A person has negligently violated this section, the
6 person is liable, for each violation, for:

7 (a) The greater of actual damages or liquidated damages of
8 one thousand dollars; and

9 (b) Court costs and reasonable attorney's fees incurred by
10 the person bringing the action; and

11 (c) Such other relief, including injunctive relief, as the
12 court may deem appropriate; or

13 (2) A person has willfully or intentionally or recklessly
14 violated this section, the person is liable, for each violation,
15 for:

16 (a) The greater of actual damages or liquidated damages of
17 five thousand dollars; and

18 (b) Exemplary damages; and

19 (c) Court costs and reasonable attorney's fees incurred by
20 the person bringing the action; and

21 (d) Such other relief, including injunctive relief, as the
22 court may deem appropriate.

23 7. No civil liability shall accrue to any health care
24 provider as a result of making a good faith report to the

1 department of health and senior services about a person
2 reasonably believed to be infected with HIV, or cooperating in
3 good faith with the department in an investigation determining
4 whether a court order directing an individual to undergo HIV
5 testing will be sought, or in participating in good faith in any
6 judicial proceeding resulting from such a report or
7 investigations; and any person making such a report, or
8 cooperating with such an investigation or participating in such a
9 judicial proceeding, shall be immune from civil liability as a
10 result of such actions so long as taken in good faith.

11 191.659. 1. Except as provided in subsection 2 of this
12 section, all individuals who are delivered to the department of
13 corrections and all individuals who are released or discharged
14 from any correctional facility operated by the department of
15 corrections, before such individuals are released or discharged,
16 shall undergo HIV testing without the right of refusal. In
17 addition, the department of corrections may perform or conduct
18 HIV testing on all individuals required to undergo annual or
19 biannual physical examinations by the department of corrections
20 at the time of such examinations.

21 2. The department of corrections shall not perform HIV
22 testing on an individual delivered to the department if similar
23 HIV testing has been performed on the individual subsequent to
24 trial and if the department is able to obtain the results of the

1 prior HIV test.

2 3. The department shall inform the victim of any sexual
3 offense defined in chapter 566, RSMo, which includes sexual
4 intercourse or deviate sexual intercourse as an element of the
5 crime, of any confirmed positive results of HIV testing on an
6 offender within the custody of the department. If the victim is
7 an unemancipated minor, the department shall also inform the
8 minor's parents or custodian, if any.

9 191.660. 1. Except as provided in subsection 2 of this
10 section, sex offenders who are delivered to the department of
11 corrections shall undergo Hepatitis B testing, Hepatitis C
12 testing, HIV testing or testing for any other sexually
13 transmitted diseases without the right of refusal. In addition,
14 the department of corrections may perform or conduct Hepatitis B
15 testing, Hepatitis C testing, HIV testing or testing for any
16 other sexually transmitted diseases on all individuals required
17 to undergo annual or biannual physical examinations by the
18 department of corrections at the time of such examinations.

19 2. The department of corrections shall not perform
20 Hepatitis B testing, Hepatitis C testing, HIV testing or testing
21 for any other sexually transmitted diseases on an individual at
22 the time he or she is delivered to the department if similar
23 Hepatitis B testing, Hepatitis C testing, HIV testing or testing
24 for any other sexually transmitted diseases has been performed on

1 the individual subsequent to trial and if the department is able
2 to obtain the results of the prior Hepatitis B test, Hepatitis C
3 test, HIV test or test for any other sexually transmitted
4 diseases.

5 3. The department shall inform the victim of any sexual
6 offense defined in chapter 566, RSMo, which includes sexual
7 intercourse, deviate sexual intercourse or sexual contact as an
8 element of the crime, of any confirmed positive results of
9 Hepatitis B testing, Hepatitis C testing, HIV testing or testing
10 for any other sexually transmitted diseases on an offender within
11 the custody of the department. If the victim is an unemancipated
12 minor, the department shall also inform the minor's parents or
13 custodian, if any.

14 191.677. 1. It shall be unlawful for any individual
15 knowingly infected with HIV to:

16 (1) Be or attempt to be a blood, blood products, organ,
17 sperm or tissue donor except as deemed necessary for medical
18 research; or

19 (2) Act in a reckless manner by exposing another person to
20 HIV without the knowledge and consent of that person to be
21 exposed to HIV, in one of the following manners:

22 (a) Through contact with blood, semen or vaginal [fluid]
23 secretions in the course of oral, anal or vaginal sexual
24 intercourse[,]i or

1 **(b)** By the sharing of needles; or

2 **(c)** By biting another person or acting in any other manner
3 which causes the HIV infected person's semen, vaginal secretions,
4 or blood to come into contact with the mucous membranes or
5 nonintact skin of another person.

6 Evidence that a person has acted recklessly in creating a risk of
7 infecting another individual with HIV shall include, but is not
8 limited to, the following:

9 **[(a)] a.** The HIV infected person knew of such infection
10 before engaging in sexual activity with another person, sharing
11 needles with another person, biting another person, or causing
12 his or her semen, vaginal secretions, or blood to come into
13 contact with the mucous membranes or nonintact skin of another
14 person, and such other person is unaware of the HIV infected
15 person's condition or does not consent to contact with blood,
16 semen or vaginal fluid in the course of [sexual activity, or by
17 the sharing of needles] such activities;

18 **[(b)] b.** The HIV infected person has subsequently been
19 infected with and tested positive to primary and secondary
20 syphilis, or gonorrhea, or chlamydia; or

21 **[(c)] c.** Another person provides [corroborated] evidence of
22 sexual contact with the HIV infected person after a diagnosis of
23 an HIV status.

1 2. Violation of the provisions of subdivision (1) or (2) of
2 subsection 1 of this section is a class [D] B felony unless the
3 victim contracts HIV from the contact in which case it is a class
4 A felony.

5 3. [Violation of the provisions of subsection 1 of this
6 section with a person under the age of seventeen is a class C
7 felony if the actor is over the age of twenty-one.

8 4.] The department of health and senior services or local
9 law enforcement agency, victim or others may file a complaint
10 with the prosecuting attorney or circuit attorney of a court of
11 competent jurisdiction alleging that [an individual] a person has
12 violated a provision of subsection 1 of this section. The
13 department of health and senior services shall assist the
14 prosecutor or circuit attorney in preparing such case[.], and
15 upon request, turn over to peace officers, police officers, the
16 prosecuting attorney or circuit attorney, or the attorney general
17 records concerning that person's HIV-infected status, testing
18 information, counseling received, and the identity and available
19 contact information for individuals with whom that person had
20 sexual intercourse or deviate sexual intercourse and those
21 individuals' test results.

22 4. The use of condoms is not a defense to a violation of
23 paragraph (a) of subdivision (2) of subsection 1 of this section.

24 566.135. 1. Pursuant to a motion filed by the prosecuting

1 attorney or circuit attorney with notice given to the defense
2 attorney and for good cause shown, including evidence of a
3 medically significant exposure as defined in section 191.658,
4 RSMo, in any criminal case in which a defendant has been charged
5 by the prosecuting attorney's office or circuit attorney's office
6 with any offense under this chapter or pursuant to section
7 575.150, 567.020, 565.050, 565.060, 565.070, 565.072, 565.073,
8 565.074, 565.075, 565.081, 565.082, 565.083, 568.045, 568.050, or
9 568.060, RSMo, or paragraph (a), (b), or (c), of subdivision (2)
10 of subsection 1 of section 191.677, RSMo, the court may order
11 that the defendant be conveyed to a state, city, or county
12 operated HIV clinic for testing for HIV, hepatitis B, hepatitis
13 C, syphilis, gonorrhea, and chlamydia. The results of the
14 defendant's HIV, hepatitis B, hepatitis C, syphilis, gonorrhea,
15 and chlamydia tests shall be released to the victim and his or
16 her parent or legal guardian if the victim is a minor. The
17 results of the defendant's HIV, hepatitis B, hepatitis C,
18 syphilis, gonorrhea, and chlamydia tests shall also be released
19 to the prosecuting attorney or circuit attorney and the
20 defendant's attorney. The state's motion to obtain said testing,
21 the court's order of the same, and the test results shall be
22 sealed in the court file. If the suspect has tested positive for
23 HIV or another sexually transmitted disease the state may use
24 said evidence at trial and then reseal the test results in the

1 court file.

2 2. As used in this section "HIV", means the human
3 immunodeficiency virus that causes acquired immunodeficiency
4 syndrome.